IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 5635 of 2005

Between:

Kunchala Hari Babu S/o. Late Venkateswarlu,
Throvagunta, Ongole Mandal, Prakasam District.

..... PETITIONER

AND

1 The Asst. Commissioner, Provident Fund,
Sub Regional Office, 3rd Lane, Krishna Nagar,
Guntur, Guntur District.
2 The Regional Provident Fund Commissioner, Barkatpuram, Hyderabad.
3 The Commissioner, Employees Provident Fund,
Mayur Bhawan, Connaught Circle, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the impugned order dated 13.12.2004 bearing No. /AP/400072/7A/SRD/GNT/2004/2233 issued by the respondent as illegal, void, un-enforceable, unconstitutional and ultra vires of the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, and to pass such other order or orders.

Counsel for the Petitioner : SMT. JYOTHI ESWAR GOGINENI

Counsel for the Respondents : MR.R.N.REDDY (SC FOR EMPLOYEE'S PF ORG.)

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.5635 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the proceedings of the 1st respondent dated 13-12-2004 as arbitrary, illegal and ultra vires the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, 'the Act').

A perusal of the impugned proceedings dated 13-12-2004 shows that the establishment known as Kancharla Hari Babu and Bros. which has been covered under the provisions of the Act and the Schemes framed thereunder has failed to submit the returns as required under the Schemes for the period from 2/2003 to 6/2004 and that the establishment has also not remitted the Employees' Provident Fund and other contributions for the abovesaid period and therefore the employer

was summoned to appear before the 1st respondent on 24-08-2004 under Section 7-A of the Act and to represent his case. However, the employer failed to appear and consequently on the basis of the material on record, under the impugned proceedings it was determined that the employer is liable to remit a sum of Rs.23,609-50 ps towards the arrears of PF contributions together with interest thereon and accordingly the employer was called upon to pay the said amount within seven days. The said action of the respondents is under challenge in this writ petition contending inter alia that no prior notice was issued to the petitioner at any point of time and no enquiry was conducted before passing the proceedings dated 13-12-2004. It is also contended that the petitioner cannot be made liable under the impugned proceedings since the provisions of the Act are not at all attracted. The specific plea of the petitioner is that he is not concerned with the establishment known as Kancharla Hari Babu and Bros. and that the respondents ought to have made an enquiry under Section 1(3) of the Act to determine whether there is any such establishment.

I have heard the learned Counsel for the Petitioner as well as Sri R.N. Reddy, the learned Standing Counsel appearing for the respondents.

At the outset, it is to be noted that if the petitioner who does not dispute the service of the impugned proceedings dated 13-12-2004, is aggrieved by the same and pleads that being an ex parte order the same is not sustainable, he ought to have filed an application as provided under sub-Section (4) of Section 7-A of the Act. That apart, an alternative remedy of Appeal is available under Section 7-I of the Act.

Whether the provisions of the Act are applicable to the case on hand or whether the petitioner was served any prior notice before passing the impugned proceedings dated 13-12-2004 or whether there was any sufficient cause for non-appearance of the petitioner before the 1st respondent are all the questions to be enquired into after affording due opportunity to both the parties. It is neither possible nor permissible for this Court to enter into such an enquiry into the disputed questions of fact.

In the circumstances, without expression any opinion on merits, I deem it appropriate to dispose of the Writ Petition granting leave and liberty to the petitioner to work out the appropriate remedy as available under the Act against the impugned proceedings dated 13-12-2004. Without exhausting the said alternative remedies, the petitioner cannot maintain this writ petition.

Accordingly, granting leave and liberty, the Writ Petition is disposed of. No costs.

However, having regard to the facts and circumstances of the case, there shall be a direction to the respondents not to take any coercive steps against the petitioner on the basis of the impugned proceedings dated 13-12-2004 for a period of six weeks from today.

_____

23rd March, 2005

gbs

To

1 The Asst. Commissioner, Provident Fund,
Sub Regional Office, 3rd Lane, Krishna Nagar,
Guntur, Guntur District.
2 The Regional Provident Fund Commissioner, Barkatpuram, Hyderabad.
3 The Commissioner, Employees Provident Fund,
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